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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,651	09/02/2003	Marcel Brouard	MAD8577	1916
7590		07/06/2007		
Paul Biron				
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			EXAMINER	
			COLE, ELIZABETH M	
			ART UNIT	PAPER NUMBER
			1771	
			MAIL DATE	DELIVERY MODE
			07/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/652,651

Applicant(s)

BROUARD ET AL.

Examiner

Elizabeth M. Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 7-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/17/07 has been entered.

2. Claims 7-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not disclose that the hooks provide "high" shear resistance.

3. Claims 7-15 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "high shear resistance" in claim 7 is a relative term which renders the claim indefinite. The term "high shear resistance" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is not clear what degree of shear resistance would be considered to be high shear resistance. The metes and bounds of the claims are not clear.

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4. Claim 11 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as originally filed does not provide support for the limitation that the central layer of said sole is free from low melt fibers.

5. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 11, it is not clear what is meant by "low melt" fibers. What melting point would be considered low? The scope of the claim is unclear.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanes, US Patent Application Publication 2002/0182369 in view of Manor et al, U.S. Patent No. 5,807,161. Hanes discloses a protection system for preventing floors from becoming damaged due to moving furniture, (see abstract), comprising a first layer which is adhesively bonded to the base of a piece of furniture and which comprises a plurality of hooks (paragraph 0012) and a second layer comprising a felt layer which

may be either natural or synthetic fibers which comprises a plurality of loops which engage with the hooks of the first layer, (paragraph 0037). Thus the loops comprise some of the fibers of the felt. The felt layer may further comprise another layer of felt on the other side of the loops. Therefore, the loops would correspond to the claimed reinforcing material which is sandwiched by the first and second layers of the felt material, (paragraph 0039). It is noted that the process limitations are not given patentable weight since the loop containing layers would comprise a solid polymeric material and the method by which the material is formed does not serve to further limit the claimed article. Hanes differs from the claimed invention because Hanes does not disclose that the hooks are formed on a piece of felt fabric. However, since Hanes teaches that felt fabrics are soft and protective, it would have been obvious to have attached the hooks of layer 20 to a felt material motivated by the teaching of Hanes that felt fabric provide protection to structures which are in danger of be scratched in order to protect the furniture itself and not just the floor from abrasion during moving. By attaching the hooks to a felt layer the adhesive layer 30 would then be applied to the felt layer. With regard to the new limitation that the felt is free of low melt fibers, although Hanes does teach a preferred embodiment wherein the loops are formed of polyester fibers having a lower melting point than the other fibers in the felt in paragraph 0039, Hanes does not require that the loops be formed of the lower melting point fibers, and Hanes also teaches that other fibers can be used in paragraph 0038.

Hanes differs from the claimed invention because Hanes does not specifically disclose that the loops are mushroom shaped, but instead teaches that hook may be

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any well-known shape. See paragraph 0035. Manor is relied on to show that mushroom shaped hooks are a well known shape and were recognized as equivalent to j-shaped hooks at the time the invention was made. See col. 6, line 54 – col. 7, line 19. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed a mushroom shaped hook. One of ordinary skill in the art would have been motivated to employ a mushroom shaped hook by the teaching of Manor that such hooks were art recognized equivalents to j-shaped hooks.

8. Applicant's arguments filed 4/17/07 have been fully considered but they are not persuasive. With regard to claim 11, it is not clear whether claim 11 has been cancelled or not, since one set of claims includes claim 11 and one set does not. Therefore, claim 11 has been included with the other claims in the rejections of record.

1. Applicant argues that although mushroom shaped hook have been known in rigid abrasive applications, none of the cited art recognized that the hook provide a high shear resistance in all directions. However, Hanes teaches that the hook material can be of any of the well k known shapes of hooks and specifically illustrates a j-hook shape. Manor teaches that mushroom shaped hooks were recognized in the art as equivalents to J-shaped hooks at the time the invention was. "The fact that appellant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious." *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd.Pat. App. & Inter. 1985).


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.


Elizabeth M. Cole
Primary Examiner
Art Unit 1771

e.m.c